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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ELPIS SAKARIA, *et al.*,

Petitioners,

v.

TRANS WORLD AIRLINES, INC.,

Respondent.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

PETITIONERS' BRIEF IN REPLY TO BRIEF IN RESPONSE TO PETITION

Jay S. Bybee
6516 Millstone Drive
Baton Rouge, LA 70808
(504) 388-8707

Ronald D. Maines
Counsel of Record
Maines & Harshman, Chrtd.
2300 M Street, N.W.
Suite 900
Washington, D.C. 20037
(202) 223-2817

Attorneys for
Elpis Sakaria, et al.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ARGUMENT 1

CONCLUSION 7

TABLE OF AUTHORITIES

Cases: Page

Air France v. Saks, 470 U.S. 392 (1985) 1, 2, 4

Sakaria v. Allstate Life Ins. Co., U.S.D.C., D. Md. No. HM-87-3302 6

Sakaria v. TWA, 8 F.3d 172 (1993) . . . . . *supra*

Stoleson v. United States, 708 F.2d 1217 (5th Cir. 1983) . 2

Statutes:

Fed. R. Civ. P. 36 6

Miscellaneous:

Prosser, Handbook of the Law of Torts (4th ed. 1971) 2

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In our Petition, we demonstrated that the court of appeals had erred in affirming summary dismissal of the Sakaria family's claims under the Warsaw Convention, arising out of the death of Jagdish Sakaria following a terrorist attack at the Rome airport. Specifically, the Fourth Circuit improperly analyzed the causation aspect of Article 17. Although this Court has clarified the meaning of the term "accident" in Article 17, *Air France v. Saks*, 470 U.S. 392 (1985), there remains unresolved the issue of the proper standard for assessing the causal connection between an "accident" and an injury or death.

1. This case presents an ideal vehicle for resolving this issue. As the *Saks* Court wrote: "Any injury is the product of a chain of causes, and we require only that the passenger be able to prove that some link in the chain was an unusual or unexpected event external to the passenger." *Id.* at 405. In this case, however, the court of appeals injected a new limitation into the analysis -- namely, that the rationality of a passenger's subjective reaction to an "accident" within the meaning of Article 17 affects whether causation has been established. Here, the lower court took the position that Mr. Sakaria's alleged "hallucinatory misperceptions of reality" (8 F.3d 172, App. at 14a) broke the causal nexus between the uncontroverted circumstances of the terrorist attack and Mr. Sakaria's subsequent death. In this, the court erred.

In its opposition brief TWA nonetheless persists in this theory of the case. TWA's evident purpose in its counter-statement of the facts is to paint Jagdish Sakaria as an unreliable witness because of an alleged mental disability. Such a condition, on TWA's theory, would settle the matter, as if it merely needed to be shown that Mr. Sakaria had suffered a mental impairment in order to extinguish any causal nexus between his fatal heart attack and the terrorist incident at the Rome airport. Mr. Sakaria's mental condition, however, is entirely beside the point -- an element of the analysis which TWA fails to understand.

Few principles of tort law are more axiomatic than that the law takes a tort victim as it finds him. *See, e.g.*, Prosser, Handbook of the Law of Torts 261 (4th ed. 1971); *Stoleson v. United States*, 708 F.2d 1217, 1220 (5th Cir. 1983). Thus, the nature of Mr. Sakaria's interpretation of the events which occurred at the Rome airport *is irrelevant* to TWA's liability under Article 17, so long as the undisputed, objectively verified events constituted an "accident" causally related to Mr. Sakaria's fatal heart attack. Article

17 liability has nothing to do with whether a passenger's reaction to an "accident" is rational or irrational. Accordingly, TWA's attempt to dispel the causation issue by focusing on Mr. Sakaria's mental health is a straw man argument, and must be rejected.[1]

2. The court of appeals, by focusing on the *trustworthiness* of Mr. Sakaria's statements to Mr. Bafitis, committed the same analytical error. As explained in our Petition, that evidence should have gone to the issue of Mr. Sakaria's subjective reaction to the events at Rome as a further link in the causal chain, *not* to the truth of the matters asserted. Petition at 16-18. It was thus error for the court of appeals to disregard Dr. Marsh's opinion that the "totality of the events" (8 F.3d at 172, App. at 16a) proximately caused Mr. Sakaria's fatal heart attack "once the possible cause was limited to the prolonged wait in the aircraft." *Ibid*. For, even if Mr. Sakaria's perceptions were not wholly consistent with the facts, there was nevertheless no question but that extreme stress induced his heart attack and that the actual circumstances of the terrorist attack constituted the first vital link in the chain of causation. In short, the court of appeals and TWA both conflate the trustworthiness of Mr. Sakaria's perceptions with the causal effect which those perceptions had.

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1 Additionally, TWA's account of the process by which Dr. Marsh allegedly renounced his opinion is inaccurate. At Page 3 of its opposition brief, TWA states: "When Petitioners' expert was presented with the description of the aircraft and terminal conditions provided by the other passengers, he renounced his conclusion that the decedent's heart attack was caused by his experience in Rome." This is false. Petitioners' expert, Dr. Marsh, was deposed on June 16, 1989. App. at 22a. The earliest deposition of any of the passengers was July 18, 1989, nearly five weeks after the Marsh deposition. As explained in our Petition, the scenario which purportedly formed the basis of Dr. Marsh's "renunciation" was not based on the actual testimony of other passengers, but was a hypothetical. Petition at 12.

For this reason, the lower court's focus on whether plaintiffs' expert witness, Dr. Marsh, "renounced" his earlier opinion as to causation, is grossly flawed. It is predicated on the invalid assumption that Mr. Sakaria's subjective reaction to the terrorist attack, including his alleged embellishment of actual events, could break the causal chain if it were not reliable testimony. But that could only be the case if it were the *only link* in the chain, that is, if there were no underlying "accident" which had given rise to Mr. Sakaria's reaction in the first place.

This case is thus distinguishable, for example, from *Air France v. Saks*, *supra* where the complaining passenger's ear problem arose in the context of a *normal* flight during which no "accident" had occurred. If an "accident" had occurred, the passenger's subjective reaction to that event, whether its manifestation were physical or psychological, would be irrelevant to the issue of liability under Article 17.

Petitioners maintain that Mr. Sakaria's mental health was normal. *See* Petition at 8 n.2. Nevertheless, even assuming the mental impairment which TWA urges, evidence in the summary judgment record established that, had Mr. Sakaria suffered a hallucinatory lapse, it would have had causal efficacy. Dr. Marsh, in response to opposing counsel's question whether Mr. Sakaria's heart attack could have been "induced in [his] own mind as opposed to actually having seen and heard certain things," opined: "Certainly." App. at 26a. This testimony, far from running against the Sakarias' case, establishes a link in the chain of causation. So long as Jagdish Sakaria's subjective reaction was triggered by actual events (the occurrence of the terrorist attack, the armored trucks and soldiers outside the plane, confinement aboard the plane for two hours, *etc.*) his response to those events provided evidence of causation.

Indeed, the lower court presumably would not have seen any obstacle to TWA's liability had the facts been that a passenger, upon hearing the pilot announce the occurrence of the terrorist attack, turned to a fellow passenger, began emoting about an invasion from outer space, and then suffered his heart attack immediately. It cannot seriously be disputed that whether or not the passenger's subjective reaction was "normal" would be irrelevant. Nor would the trustworthiness of the passenger's hearsay statement have had a bearing on the causation issue, for the *fear* of the space invasion -- as reflective of the passenger's state of mind -- would be evidence of a further link in a causal reaction triggered by the pilot's announcement. *See* Petition at 16-18.

Yet, in the instant case, the court of appeals treated Mr. Sakaria's hearsay statement in just this aberrant way, reckoning the evidence of Mr. Sakaria's past mental difficulties as undermining the causal connection between the attack at the airport and Mr. Sakaria's subsequent death.

3. In its opposition brief, TWA characterizes the events at the Rome airport as "unremarkable" and "hardly depict[ing] an unexpected or unusual event." Brief In Response at 4-5. The events, however, speak for themselves. The TWA flight landed minutes after terrorists attacked the terminal where the passengers would disembark, the passengers were confined aboard the aircraft with the air conditioning turned off in 90 degree weather, the pilot had announced that an "armed altercation" had just occurred, and armored vehicles and armed security personnel were waiting outside the aircraft in plain view of the passengers. 8 F.3d at 166, App. at 3a. Surely no reasonable person could characterize these events as "unremarkable."

4. Finally, it is crucial to a proper resolution of the Sakarias' Petition that the procedural context of this case

be kept clearly in mind. The analytical error committed by the court of appeals was particularly prejudicial to the Sakarias because it affirmed *summary dismissal* of their case, thus pre-empting the opportunity for a trial. The strict parameters of summary judgment action -- that it be predicated upon the absence of any material question of fact and that the record be construed in the light most favorable to the plaintiff -- underscore that summary dismissal should never be the product of inartful adjudication. Where, as here, a court's analysis is compromised by confusion over the controlling legal principles, the prejudice to plaintiffs is plain.

Moreover, the risk of prejudice is exacerbated in tort cases because they typically turn on questions of causation -- the principal element of confusion in the Fourth Circuit's analysis here; hence, the general rule that tort causes of action are rarely appropriate matters for summary disposition.[2]

The court of appeals' decision lacks the cogency and precision required when the drastic measure of disposition

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2 Additional features of this case enhanced the danger of prejudice to the Sakarias. As Petitioners noted in their rehearing papers before the Fourth Circuit, TWA's motion for summary judgment relied upon depositions and documents from separate litigation brought by Mrs. Sakaria against insurance companies that had issued accident insurance policies on her husband's life. *Sakaria v. Allstate Life Ins. Co.*, U.S.D.C., D. Md. No. HM-87-3302. A number of the facts posited by the Allstate attorney in his hypothetical to Dr. Marsh were incorporated into a set of requests for admission in the *Allstate* litigation and were deemed admitted by the magistrate judge on procedural grounds, although disputed by Mrs. Sakaria in a response that was rejected by that court. Pursuant to Fed. R. Civ. P. 36, the admissions should have been allowed for the purposes of the *Allstate* action only, and "not [as] an admission for any other purpose nor ... to be used against the party in any other proceeding." *Ibid.*

by summary judgment is imposed. TWA's opposition to the Sakarias' Petition, in tracking the lower court's analysis, only perpetuates the same errors.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

Jay S. Bybee
6516 Millstone Drive
Baton Rouge, LA 70808
(504) 388-8707

Ronald D. Maines
Counsel of Record
Maines & Harshman, Chrtd.
2300 M Street, N.W.
Suite 900
Washington, D.C. 20037
(202) 223-2817

Counsel for Petitioners,
Elpis Sakaria, et al.

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